



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1998

Ms. Bonnie Lee Goldstein
Vial, Hamilton, Koch & Knox, L.L.P.
1717 Main Street, Suite 4400
Dallas, Texas 75201-7388

OR98-1271

Dear Ms. Goldstein:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115932.

The City of Highland Village (the "city"), which you represent, received a request for "[a]ny records of any unemployment claim filed by former city manager John Klaiber against the City of Highland Village, Texas." You have submitted Exhibits 2 A-J as information that is at issue. You explain that Exhibits 2 D-I have previously been provided to the public, and that you have no objection to releasing these documents. You assert that the requested information in Exhibits 2 A-C and J is excepted from disclosure under section 552.103.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. A governmental body must meet both prongs of this test for information to be excepted under 552.103(a). For purposes of section 552.103(a), this office considers a contested case under the Texas Administrative Procedure Act ("APA"), Government Code chapter 2001, to constitute "litigation." Open Records Decision No. 588 (1991) at 7 (construing statutory predecessor to the APA).

You advise us that the city is challenging Mr. Klaiber's claim of entitlement to unemployment benefits. You assert that the Texas Workforce Commission's (the "commission") decision regarding the unemployment claim involves an administrative, contested case akin to litigation. The provisions governing the commission are found in

chapter 301 of the Government Code. Section 301.0615(a) of the Government Code states that except as otherwise provided by Title 4, a hearing conducted under this title is not subject to subchapters C-H of chapter 2001 of the Government Code, the APA. Subchapters C-H are provisions dealing with contested cases under the APA. Moreover, section 2001.224 provides that subchapters C-H "do not apply to a hearing by the Texas Employment Commission to determine whether or not a claimant is entitled to unemployment compensation." After a review of your arguments and the applicable statutes, we conclude that you have not shown that the unemployment claim is "litigation" for purposes of section 552.103(a). Thus, you may not withhold Exhibits 2 A-C and J based on section 552.103(a).

We note that the information includes Mr. Klaiber's social security number. Section 552.117 excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the social security number if Mr. Klaiber requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if Mr. Klaiber made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. In addition, a social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 115932

Enclosures: Submitted documents

cc: Mr. Raymond Diaz-Holguin
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(w/o enclosures)